

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: TFT-LCD (FLAT PANEL) ANTITRUST
LITIGATION

No. M 07-1827 SI

MDL No. 1827

This Order Relates To:

No. C 10-1064 SI

DELL INC. and DELL PRODUCTS L.P.,

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS DONNELLY ACT
CLAIM**

Plaintiffs,

v.

SHARP CORPORATION, *et al.*,

Defendants.

On April 8, 2011, plaintiffs Dell Inc. and Dell Products L.P. (“Dell”) filed a First Amended Complaint against Defendants.¹ (Docket No. 2629.) On April 22, 2011, Defendants Sharp and Hitachi filed a motion to dismiss Dell’s Donnelly Act claim. (Docket No. 2674.) Other Defendants answered the First Amended Complaint. (Docket Nos. 2676, 2677, 2678, 2679, 2680.)

On May 6, 2011, Dell filed a Notice of Voluntary Dismissal stating that Dell was dismissing its Donnelly Act claim pursuant to Federal Rule of Civil Procedure 41. (Docket No. 2725.) Dell’s notice

¹ Defendants are Sharp Corporation, Sharp Electronics Corporation (collectively “Sharp”), Hitachi Displays, Ltd., Hitachi Electronic Devices (USA), Inc., Hitachi, Ltd. (collectively “Hitachi”), Epson Imaging Devices Corporation, Epson Electronics America, Inc., Hannstar Display Corporation, Toshiba America Electronics Components, Inc., Toshiba America Information Systems, Inc., Toshiba Corporation, and Toshiba Mobile Display Co., Ltd.

1 stated: “To the extent there is any tension in the Circuit about a plaintiff voluntarily dismissing only
 2 one of several claims, Dell believes it is proper, and efficient for the Court and the defendants, to
 3 dismiss its New York state law claim and therefore does not oppose the Motion to Dismiss its Donnelly
 4 Act claims.” (Notice at 1 n.1.) Dell separately filed a Response in Opposition to Sharp and Hitachi’s
 5 motion to dismiss that stated:

6 Dell has concurrently herewith voluntarily dismissed its Donnelly Act claim. Because
 7 the Donnelly Act claim was the only count challenged by Defendants’ motion to
 8 dismiss,[] Dell requests that the Court deny the Sharp and Hitachi Defendants’ motion
 as moot.[] In the alternative, Dell does not oppose the motion to dismiss the Donnelly
 Act Claim.

9 (Docket No. 2726 at 1 (citations omitted).) On May 13, 2011, Defendants Sharp and Hitachi filed a
 10 reply to their motion stating that voluntary dismissal under Rule 41 would be improper in this case and
 11 requesting that the Court grant their motion to dismiss. (Docket No. 2770.)

12 Rule 41(a)(1)(A) states that “the plaintiff may dismiss an action without a court order by filing:
 13 (I) a notice of dismissal before the opposing party serves either an answer or a motion for summary
 14 judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared.” Fed. R. Civ. P.
 15 41(a)(1)(A). “[A] plaintiff may not use Rule 41(a)(1)(I)² to dismiss, unilaterally, a single claim from
 16 a multi-claim complaint.” *Ethridge v. Harbor House Restaurant*, 861 F.2d 1389, 1392 (9th Cir. 1988).
 17 “Federal Rule of Civil Procedure 15(a) is the appropriate mechanism ‘[w]here a plaintiff desires to
 18 eliminate an issue, or one or more but less than all of several claims, but without dismissing as to any
 19 of the defendants.’” *Id.*

20 In this case, Dell seeks to dismiss only its Donnelly Act claim while continuing to prosecute its
 21 remaining eight causes of action. Moreover, Dell filed its notice of dismissal two weeks after certain
 22 defendants answered the First Amended Complaint. For both reasons, voluntary dismissal under Rule
 23 41(a)(1)(A)(I) would be improper. Dell states, however, that in the event the Court does not grant
 24 voluntary dismissal under Rule 41, Dell does not oppose Defendant Sharp and Hitachi’s motion to
 25 dismiss.

26
 27 ² On December 1, 2007, an amendment to Federal Rule of Civil Procedure 41 renumbered the
 28 relevant provision from Rule 41(a)(1)(i) to its current form, Rule 41(a)(1)(A)(i). *See Lorillard Tobacco*
Co. v. Engida, 611 F.3d 1209, 1213 n.2 (10th Cir. 2010).

1 Accordingly, the Court GRANTS Defendant Sharp and Hitachi's Motion to Dismiss Count Six
2 of the First Amended Complaint alleging violations of the Donnelly Act, New York Gen. Bus. Law
3 §§ 340 *et seq.* (Docket No. 2674.) Dell may file an amended complaint reflecting the dismissal of its
4 Donnelly Act claim on or before **May 27, 2011**.

5
6 **IT IS SO ORDERED.**

7
8 Dated: May 16, 2011



SUSAN ILLSTON
United States District Judge